

LAWRENCE A. ORGAN (SBN 175503)
larry@civilrightsca.com
NAVRUZ AVLONI (SBN 279556)
navruz@civilrightsca.com
CIMONE A. NUNLEY (SBN 326915)
cimone@civilrightsca.com
CALIFORNIA CIVIL RIGHTS LAW GROUP
332 San Anselmo Avenue
San Anselmo, California 94960
Telephone: (415)-453-7352
Facsimile: (415)-785-7352

J. BERNARD ALEXANDER (SBN 128307)
ALEXANDER KRAKOW + GLICK LLP
1900 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Telephone: (310) 394-0888
Facsimile: (310) 394-0811

Attorneys for Plaintiffs,
DEMETRIC DI-AZ and OWEN DIAZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**PLAINTIFFS' REVISED DESIGNATION
OF DEPOSITION TESTIMONY OF
KEVIN MCGINN WITH DEFENDANT'S
OBJECTIONS AND/OR
COUNTERDESIGNATIONS**

Pretrial Conference Date: 09-21-21
Time: 3:00 p.m.

Trial Date: September 24, 2021
Complaint filed: October 16, 2017

Plaintiff Owen Diaz hereby designates the following revised deposition transcript excerpts for Kevin McGinn, NextSource's PMK and CFO, for presentation via video as part of his case in chief and submits these with Defendant's objections and/or counter designations:

McGinn, Kevin 6/17/19, Volume 1

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1	7:21- 7:23	<p>7:21 MR. ORGAN: Q. Could you please state and</p> <p>22 spell your full name for the record.</p> <p>23 A. Kevin McGinn; K-E-V-I-N, M-C-G-I-N-N.</p>	<p>8:3 Q. And did you go to college?</p> <p>4 A. Yes.</p> <p>5 Q. Where did you go to college?</p> <p>6 A. Middle Tennessee State University.</p> <p>7 Q. And when did you graduate?</p> <p>8 A. 1992.</p> <p>9 Q. And what was your degree?</p> <p>10 A. Master's in business administration. Well,</p> <p>11 that was the undergrad, in business administration. I</p> <p>12 also have a graduate degree as well.</p> <p>13 Q. From the same Middle Tennessee State</p> <p>14 University?</p> <p>15 A. No.</p> <p>16 Q. So your undergraduate degree was from Middle</p> <p>17 Tennessee State university?</p> <p>18 A. Yes.</p> <p>19 Q. And that was in 1992?</p> <p>20 A. Yes.</p> <p>21 Q. And that was in business?</p> <p>22 A. Yes.</p> <p>23 Q. And what was your MBA; where was that from?</p> <p>24 A. Wilkes University.</p>
2	9:06- 9:12	<p>06 Q. When did you -- well, what's your current</p> <p>07 position for nextSource, Inc.?</p> <p>08 A. I'm the chief financial officer for</p> <p>09 nextSource, Inc.</p> <p>10 Q. And where are you located? Where is your</p> <p>11 office?</p> <p>12 A. Based in Nashville, Tennessee.</p>	<p>9:13 Q. How long have you worked for nextSource?</p> <p>14 A. Just under four years.</p> <p>15 Q. So when did you start working at nextSource?</p> <p>16 A. October of 2015.</p> <p>17 Q. And what was your starting position with</p> <p>18 nextSource, Inc.?</p> <p>19 A. I joined nextSource as the</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			CFO. 20 Q. So you've been the CFO since you joined 21 nextSource in October of 2015; is that right? 22 A. Yes.
3	10:02-10:09	10:02 MR. ORGAN: Q. Tell me, what are your job 03 duties as the CFO for nextSource, Inc.? 04 A. I'm responsible for all the accounting 05 control of the company, the financial reporting of the 06 company. The payroll processing for the company 07 reports to me. Human resources reports to me. 08 Q. How many direct reports do you have? 09 A. Approximately five direct reports.	
4	12:15-13:09	12:15 Q. I'm asking you what nextSource considers. 16 And so what I'm trying to find out is, does nextSource 17 consider administrative employees to be employees of 18 nextSource? 19 A. No. The administrative -- the associates, as 20 I define the associates who are -- in which we provide 21 the administrative payroll, their pay rates are set by 22 the clients. They act under the direction and control 23 of the clients. So I would not -- nextSource would 24 not consider them employees in that -- under that 25 definition. 13:01 Q. Okay. So nextSource considers the associates 02 to be under the direction and control of the clients 03 who you contract with; is that right? 04 A. That's correct. 5 Q. Okay. And nextSource's role,	<u>Counterdesignation:</u> 13:05-13:09. Rule of completeness. Fed. R. Evid. 106, Fed. R. Civ. P. 32(a)(6). 5 Q. Okay. And nextSource's role, relative to the 6 associates, is to essentially pay them their salary or 7 hourly rates and then any benefits that they're 8 entitled to; is that correct? 9 A. Correct. (NOTE: Counterdesignation is accepted by Plaintiff)

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>relative to the 6 associates, is to essentially pay them their salary or 7 hourly rates and then any benefits that they're 8 entitled to; is that correct? 9 A. Correct.</p>	
5	13:10- 13:19	<p>13:10 Q. Is there any other role that nextSource 11 plays, relative to the associates, in terms of their 12 employee, or their employment with a client? 13 A. So the associate works at the direction of 14 the client, usually on the client site. NextSource 15 will, if needed, take direction from the client to 16 discipline an employee, if the client has requested us 17 to. If the client has -- has wished for the person to 18 be removed from the site, we could facilitate that 19 removal. That's essentially, generally, it.</p>	
6	16:10- 16:20	<p>16:10 Q. So looking at Exhibit 166, you've been 11 designated as the person most knowledgeable on Topic 12 1, the contractual relationship between Defendant and 13 Tesla, Inc.; is that true, subject to your objections? 14 A. Yes. 15 Q. And you've also been designated as the person 16 most knowledgeable on the second topic, the 17 contractual relationship between Defendant and 18 CitiStaff Solutions, Inc., subject to your objections; 19 is that correct? 20 A. Yes.</p>	<p>Testimony was only provided subject to the objections to the deposition notice, and testimony does not reflect any of the objections as stated at the deposition: "Counsel, these questions are all subject to the objections that we served on your office last week. And so we would produce -- we are producing Mr. McGinn as the 30(b)(6) witness subject to all of those objections. And if you have a copy of the objections, it might be useful for you to share those with the witness as you're going down the list." Dep. 14:16- 22. Thus, it is unduly prejudicial and misleading. Fed. R. Evid. 403.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
7	17:15- 17:17	17:15 Q. Was there some kind of written contract 16 between Tesla and nextSource? 17 A. Yes.	
8	20:13- 21:04	13 Q. So in other words, nextSource would 14 coordinate with other staffing agencies to try and 15 accommodate Tesla's demand for associates at the 16 Fremont factory? 17 MR. GELLER: Misstates his testimony. 18 Go ahead. 19 THE WITNESS: NextSource would select 20 suppliers who would provide resources into the Tesla 21 factory at the direction of -- day-to-day direction of 22 Tesla. However, those workers were employed; in other 23 words, they were recruited, onboarded and paid, and, 24 if needed, you know, terminated by the supplier 25 employer. 26 21:01 MR. ORGAN: Q. And when you're referring to 27 02 "suppliers" here, you're referring to companies that 28 03 would supply manpower; is that correct? 04 A. Yes.	<u>Counterdesignation: 22:21-24.</u> Rule of completeness. Fed. R. Evid. 106, Fed. R. Civ. P. 32(a). 21 Q. In addition to that, did nextSource provide 22 any additional services for CitiStaff employees, other 23 than the timekeeping function? 24 A. No.
9	25:10- 25:24	25:10 Q. So who were the -- other than CitiStaff 11 Solutions, who were the other suppliers that 12 nextSource worked with when you first onboarded in 13 October of 2015, relative to the Tesla Fremont 14 factory? 15 A. CitiStaff is one supplier. Chartwell was the 16 other, primary supplier. I believe there	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>was a third 17 supplier not relevant here, but I'm happy to share the 18 name. Maliko, I believe, was another supplier 19 employer at the Tesla site. 20 Q. In terms of providing sort of 21 production-associate level employees, were the primary 22 suppliers that nextSource coordinate with CitiStaff 23 and Chartwell? 24 A. Yes.</p>	
10	36:13- 36:18	<p>13 Q. Okay. So with respect to CitiStaff providing 14 workers at the Tesla factory as one of nextSource's 15 suppliers, that would be pursuant to a specific 16 contract between nextSource and CitiStaff; is that 17 right? 18 A. Yes.</p>	
11	37:20- 38:01	<p>37:20 Q. So in terms of the contract, though, that 21 nextSource has with CitiStaff relative to providing 22 services to or employees to the Tesla factory, that 23 contract was specific to providing employees to Tesla; 24 right? 25 MR. GELLER: Asked and answered. 38:01 THE WITNESS: Yes.</p>	
12	97:14- 97:19	<p>97:14 Q. So in other words, Mr. Diaz's relationship, 15 as I understand it then, is that of -- he -- Mr. Diaz 16 was working for a contractor supplier of nextSource, 17 pursuant to nextSource's contract with Tesla; is that 18 right? 19 A. Yes.</p>	
13	99:06- 99:18	99:06 Q. But in terms of your suppliers, the companies	Testimony is cumulative, wastes time and would cause undue

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>07 like CitiStaff and Chartwell, they're essentially just</p> <p>08 providing employees to Tesla to work in Tesla's</p> <p>09 factory; is that correct?</p> <p>10 MR. GELLER: Misstates his testimony.</p> <p>11 Objection to the form.</p> <p>12 MS. SWAFFORD-HARRIS: And calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: The supplier will, in the</p> <p>15 course of their employment of the worker, will</p> <p>16 recruit, onboard, and pay the worker. They place that</p> <p>17 worker at the Tesla site, who then works under the</p> <p>18 day-to-day direction and control of Tesla.</p>	<p>delay. The same testimony was provided by designations 4, 9, 10, 14, 21, 30, 34 and 40. Fed. R. Evid. 403.</p>
14	106:24-108:08	<p>106:24 Q. So we were talking about the process that</p> <p>25 Wayne Jackson was supposed to go through.</p> <p>107:01 One thing that Mr. Jackson was supposed to do</p> <p>02 was to act as a liaison between Tesla and CitiStaff;</p> <p>03 is that correct?</p> <p>04 A. Correct.</p> <p>05 Q. And another thing that Mr. Jackson was</p> <p>06 supposed to do was to gather information relative to</p> <p>07 Mr. Diaz's complaint; correct?</p> <p>08 A. When Mr. Jackson was made aware of the</p> <p>09 complaint, he gathered facts.</p> <p>10 Q. Okay. And then another thing Mr. Jackson was</p> <p>11 supposed to do was to confer with his boss, Terry</p> <p>12 Garrett, about what steps to take for -- relative to</p> <p>13 nextSource; correct?</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>14 A. I would push back a little bit on what to do</p> <p>15 next for nextSource. This was not deemed to be a</p> <p>16 nextSource issue, so what Wayne was doing was -- my</p> <p>17 understanding was gathering the facts, taking</p> <p>18 statements, and then his disposition would be to bring</p> <p>19 that to Tesla on the client side and then the supplier</p> <p>20 for which the offending person would have worked.</p> <p>21 Q. In terms of how Mr. Jackson was supposed to</p> <p>22 bring the issues relating to Owen Diaz's complaint and</p> <p>23 his investigation to Tesla, was there a particular</p> <p>24 person that he was supposed to bring that information</p> <p>25 to at Tesla?</p> <p>108:01 A. Yes, so concurrent with Mr. Diaz advising</p> <p>02 Mr. Jackson, Wayne Jackson about the claim, the --</p> <p>03 remember I mentioned earlier, there was a series of</p> <p>04 department managers. Well, the affected department</p> <p>05 manager, I believe the name is Victor Quintero,</p> <p>06 brought -- advised Wayne of the claim, complaint, and</p> <p>07 Wayne was fact gathering and would have brought the</p> <p>08 information back to Victor Quintero.</p>	

CALIFORNIA CIVIL RIGHTS LAW GROUP
ALEXANDER KRAKOW + GLICK LLP

DATED: September 20, 2021

By: /s/ Lawrence A Organ
Lawrence A. Organ, Esq.
Navruz Avloni, Esq.
Cimone A. Nunley, Esq.
J. Bernard Alexander, Esq.
Attorneys for Plaintiffs
DEMETRIC DI-AZ AND OWEN DIAZ

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28